

CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700
Richard Levin (RL 1651)

Attorneys for Credit Suisse

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re) **Chapter 11**
)
)
LEHMAN BROTHERS HOLDINGS INC., et al.,) **Case No. 08-13555 (JMP)**
)
)
Debtors.) **(Jointly Administered)**

**RESPONSE OF CREDIT SUISSE TO
DEBTORS' THREE HUNDRED EIGHTY-SIXTH OMNIBUS OBJECTION TO
CLAIMS (NO LIABILITY CLAIMS)**

Credit Suisse AG; Credit Suisse (Monaco) S.A.M.; Credit Suisse (UK) Limited; Credit Suisse AG, Singapore Branch; and Credit Suisse Securities Europe, Limited (collectively, “Credit Suisse”), by and through its undersigned counsel, files this response (the “Response”) to the Three Hundred Eighty-Sixth Omnibus Objection to Claims (No Liability Claims) [Docket No. 32893] (the “Objection”) filed by Lehman Brothers Holdings Inc., as Plan Administrator (the “Plan Administrator”) with respect to the portions of the claims held by Credit Suisse to which the Objection relates (the “Claims”), and respectfully states as follows:

BACKGROUND

1. Commencing on September 15, 2008, Lehman Brothers Holdings Inc. (“LBHI”) and affiliated debtors (together with LBHI, the “Debtors”) commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code (the “Code”).
2. On October 29, 2009, Credit Suisse timely filed proof of the Claims against LBHI, copies of which are attached hereto as Exhibit A, in accordance with the Bankruptcy

Code, the Federal Rules of Bankruptcy Procedure, the Order Pursuant to Section 502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) Establishing the Deadline for Filing Proofs of Claim, Approving the Form and Manner of Notice Thereof and Approving the Proof of Claim Form dated July 2, 2009 [Docket No. 4271] and the Notice of Deadlines for Filing Proofs of Claim Based on Lehman Programs Securities dated July 27, 2009.¹

3. On December 17, 2012, the Plan Administrator filed the Objection with respect to the securities identified by International Securities Identification Number (“ISIN”) XS0215349357 and ISIN XS0229269856 listed on Credit Suisse’s proofs of Claims, as described more fully in the Schedule attached hereto as Exhibit C (together, the “Securities”).

4. The Securities were issued by Lehman Brothers UK Capital Funding L.P. and Lehman Brothers UK Capital Funding II L.P. (the “Trusts”). The Securities were guaranteed by Lehman Brothers Holdings plc (“LBH plc”), a non-debtor subsidiary of LBHI (the “LBH plc Guarantee”). Objection, ¶ 10.

5. On June 9, 2005, the Executive Committee of the Board of Directors of LBHI adopted a resolution by unanimous written consent providing for the full guarantee by LBHI of the payment of all liabilities of LBH plc (the “Guarantee Resolution”). The Guarantee Resolution, a copy of which is attached hereto as Exhibit D, states that “[t]he Corporation [LBHI] hereby fully guarantees the payment of all liabilities, obligations and commitments of the subsidiaries set forth on Schedule A hereto [including LBH plc], each of which shall be a Guaranteed Subsidiary.” Ex. D. Accordingly, all obligations of LBH plc, including under the

¹ Clariden Leu Limited (a/k/a Clariden Leu AG or Clariden Leu SA) (“Clariden Leu”) timely filed Claim number 55813. Effective April 2, 2012, Clariden Leu merged into and is now named Credit Suisse AG, as reflected on the Notice of Claimant Name Change and Amendment of Proof of Claim submitted to the Debtors’ claims agent on July 13, 2012, a file-stamped copy of which is attached hereto as Exhibit B. Credit Suisse has transferred a portion (but not all) of Claim 55813. As a result, Credit Suisse is the owner of a portion of Claim 55813, as more fully described on the Schedule attached hereto as Exhibit C.

LBH plc Guarantee issued in connection with the Securities, are fully guaranteed and payable by LBHI.

RESPONSE

6. Under Bankruptcy Rule 3001(f), “[a] proof of claim executed and filed in accordance with [the Bankruptcy] rules shall constitute *prima facie* evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f); *see also In re DJK Residential LLC*, 416 B.R. 100, 104 (Bankr. S.D.N.Y. 2009). Upon the Debtors’ objection, the “burden of going forward then shifts to the objector to produce evidence sufficient to negate the *prima facie* validity of the filed claim. . . . [T]he objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim’s legal sufficiency.” *In re Spiegel, Inc.*, No. 03-11540 (BRL), 2007 WL 2456626, at *15 n.6 (Bankr. S.D.N.Y. 2007) (quoting *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)).

7. The Objection does not provide evidence that refutes the *prima facie* validity of the Claims. The Plan Administrator concedes that the Securities were guaranteed by LBH plc but asserts that LBHI has no liability with respect thereto because “neither the Trusts nor LBH plc was a debtor in these cases.” Objection, ¶ 9. The Plan Administrator does not address the Guarantee Resolution, whereby LBHI guaranteed the obligations of LBH plc, including the LBH plc Guarantee with respect to the Securities. By virtue of the Guarantee Resolution, the Securities are fully guaranteed and payable by LBHI. Accordingly, the relevant portions of the Claims against LBHI are enforceable and should be allowed.

CONCLUSION

8. For the foregoing reasons, Credit Suisse respectfully requests that the Objection with respect to the relevant portions of the Claims be overruled and that the portion of the Claims to which the Three Hundred Eighty-Sixth Objection objected be allowed as filed.

Dated: January 16, 2013
New York, New York

Respectfully submitted,
CRAVATH, SWAINE & MOORE LLP
Richard Levin
825 8th Avenue
New York, NY 10019
Telephone: 212-474-1000
Facsimile: 212-474-3700
Email: rlevin@cravath.com
ATTORNEYS FOR CREDIT SUISSE